

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Helena Headquarters
1420 East 6th Avenue
Helena, MT 59620

OCTOBER 9, 2003

Commission Members Present: Dan Walker, Chairman; Tim Mulligan, Vice-Chairman; John Brenden; John Lane; Mike Murphy.

Fish, Wildlife & Parks Staff: Jeff Hagener, Director; Department personnel.

Guests: Thomas Olson, Helena; Jay Bodner, MT Stockgrowers; Jim Martin, Helena; Robin Cunningham, FOAM; Steve Pilcher, MT Stockgrowers; Don Nickman, PPSA; Russ Copeland, MOGA; Mary Ellen Schnur, MOGA; Gregg Shafter, Charlo; Trish Gruszie, Gordon Cattle Company; Henry Gordon, Gordon Cattle Company; Bruce Farling, Montana Trout Unlimited; Bill Holdorf, Skyline Sportsmen; John Wilson, Montana Trout Unlimited; Larry Copenhaver, Montana Wildlife Federation; Michael Green, Crowley Law Firm.

Topics of Discussion:

- 1. Opening - Pledge of Allegiance**
- 2. Approval of September 11, 2003 Commission Minutes**
- 3. Approval of Commission Expenses through September 30, 2003**
- 4. Employee Award -- 20-year Recognition to Gary Hammond**
- 5. Gordon Ranch Conservation Easement Proposal (R6)- Final**
- 6. Pheasants Forever Acquisition - Final**
- 7. Programmatic Guidance for Translocation of Prairie Dogs Rule - Tentative**
- 8. Deer / Elk Auction Rules - Tentative**
- 9. 2004 - 2007 Fishing Regulations - Final**
- 10. Makoshika Archery Range Lease - Final**
- 11. Smith River Special Landowner Rule - Tentative**

1. Opening - Pledge of Allegiance. Chairman Dan Walker called the meeting to order at 1:40 p.m. and led the Pledge of Allegiance.

2. Approval of Commission Minutes. Action on the September 11, 2003 minutes was postponed to October 17th, when the Commission will hold a conference call to discuss additional issues, due to the short timeframe the Commissioners had to review them prior to this meeting.

3. Approval of Commission Expenses through September 30, 2003.

Action: Mulligan moved and Lane seconded the motion to approve the Commission expenses through September 30, 2003 as presented. Motion carried.

4. Employee 20 Year Recognition Award to Gary Hammond. Jeff Hagener, FWP Director, read a letter of appreciation, relating a brief overview of the many accomplishments of Gary Hammond, FWP Wildlife Biologist, during his 20 years of service to the Department. Hagener presented Hammond with a Montana Silversmith pocket watch. Hammond recently relocated from Dillon to join the Helena FWP staff. Mr. Hammond's photo was taken with Director Hagener and Chairman Walker.

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**Walker** reminded the Commissioners that the regulations regarding Hunting District 314-23 have not been finalized due to the error in publication of them. **Don Childress, FWP Wildlife Division Administrator**, said the tentative regulations on 314-23 passed at the September meeting in Billings. He added that a letter explaining the error had been sent to the permittees in that area, and FWP has subsequently received their comments back. Childress requested scheduling a conference call to determine a final decision after the Commissioners have an opportunity to review these comments. The conference call was scheduled for October 17<sup>th</sup> at 8:30 a.m.

**Walker** asked what the potential effects would be if the season proceeded as printed in the regulations. **Kurt Alt, FWP Region 3 Wildlife Manager**, said it would be counter to the biological direction in the Upper Yellowstone. It would result in an over-harvest of bulls at a period of time when there is small recruitment, and it is in conflict with the management direction. He added that there were also serious social issues to consider.

**Walker** asked Alt if he would be corresponding with those persons who responded to the letter. **Alt** replied he had spoken at length to all involved, except two who he could not reach personally. He said regardless of the Commission's decision, FWP will be in contact with these people, and the decision will be posted on the web site, after the conference call on the 17<sup>th</sup>.

**Walker** stated that the September 11, 2003 minutes will be on the agenda for approval during the October 17<sup>th</sup> conference call. Edits must be submitted for entry into the record as soon as possible.

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5. Gordon Ranch Conservation Easement Proposal (R6) - Final. Childress explained that due to the quality of the habitat, the number of species involved in the area, and the size of this easement, it is a truly unique proposal. This conservation easement is 15,157 acres of privately owned land in Blaine County, and consists of native prairie grasslands and wetlands. The Gordon Ranch is operated as four units, however, this easement would only involve two of the units, entitled Border Unit and Fifteen Mile Creek Unit.

All comments, but three, were positive. Letters of support were also received from the US Fish & Wildlife Service, the Blaine County Commission, and the Blaine County Planning Board. Two of the negative comments came from individuals not in favor of easements in general, and one comment expressed concern that new farmers would be negatively impacted while attempting to get established. One of these comments came from an adjoining neighbor who took offense to the way the EA was written, feeling it was directed toward him and his farming efforts. The wording has been changed in the final EA.

Jim Satterfield, FWP Region 6 Supervisor, and Rick Northrup, FWP Region 6 Wildlife Biologist provided a Power Point presentation of this proposal, consisting of photos of the area, and a brief overview of the project.

Northrup said Gordon had approached FWP in the late 1990s wishing to sell a conservation easement to his grazing units. The family is interested in maintaining the prairie, and have a long time tradition of maintaining healthy grasslands. FWP has worked with the Gordons over the years in a variety of projects, such as the migratory bird stamp program and upland gamebird projects. They have also been enrolled in the Block Management Program since the early 1980s. FWP feels the Gordons would be excellent partners in such a high level conservation project. The Department originally looked at all four grazing units, but due to the wetland densities occurring in the two units discussed today, they became the priority units. These units also correspond with the requirements of the federal grant that FWP is requesting funds from. **Northrup** summarized by saying that this easement would conserve important habitat values, would retain the land in private ownership and management, would assure traditional grazing practices would be maintained, would maintain the current tax base, and public hunting opportunities would be retained.

Satterfield provided the Commission with a brief review of the public involvement process. An Environmental Assessment (EA) and Management Plan have been drafted to meet requirements of Habitat Montana. A public comment period ran from August 18 through September 12, 2003, and a public hearing was held in Chinook in September. Presentations were made to the Havre Rifle and Pistol Club, the Blaine County Commission, to the local DNRC and BLM offices, and contacts were made with adjacent landowners and sportsmen.

Brenden said he is not satisfied with the way this easement is written. He said it reflects farming as being a bad thing; he especially takes exception to the term of "sodbusting". He said it could be written better, with sensitivity, and he stated that statistics indicate that every farmer feeds nearly 135 people. He stated that whether or not this easement is approved, it will not result in fewer deer, birds, or swift fox. **Brenden** questioned how many Commissioners have actually toured the Gordon property; Mulligan alone has been there. **Brenden** said he feels this decision needs to be postponed until the Commissioners have the opportunity to tour the property in question, adding that FWP will be under scrutiny no matter what is decided.

Childress introduced Henry Gordon, and his daughter, Trish Gordon Gruszie, owners of the Gordon Ranch. **Childress** said this family has a longstanding history of land management and rest-rotation practices. Henry Gordon clarified to the Commission that he is not against farming, however, he is against enrolling land into the CRP program, and then breaking up more ground. He stated that this

large piece of ground under proposal, with its many wetlands, has evolved into good animal habitat. Gordon invited the Commissioners to his ranch for a tour of the proposed easement.

Trish Gordon Gruszie read a letter she had written as a 4th generation descendent on the Gordon Ranch. She said for over 114 years, the family has realized the value of good grass management and rest rotation practices. She said this conservation easement would continue the coexistence of their livestock operation with wildlife enhancement. She added that the Gordons have had a good relationship with FWP, and they expect that relationship to continue, since everything they do is in partnership with wildlife management. She feels it is important to preserve the land, and now is the time to start. **Murphy** asked if she has any reservations about this easement regarding impacts on her financially or otherwise in the future. She said she has none, that there is plenty of farmland around the area, as well as south of this land. She stated that she is not against farming either; in fact, she is married to a farmer.

Mulligan stated that he is supportive of this easement. He said if postponing it is necessary for approval, then that is the course of action to take. He said it fits perfectly within the intent of the legislation that authorized this process, and the legislature felt this was an important program to put into place. It is an important ecosystem to protect. He agreed that it will not make a difference on the deer populations, as it is a fact that farming and ranching can indeed increase game populations.

Walker said he would make himself available to tour the Gordon Ranch the following week, and advised the other Commissioners to do the same, so that this easement can be voted on at the November meeting. **Deb Dils, FWP Land Section Supervisor**, said there is an October tax planning deadline for the Gordons as it is the end of their corporate year, and she asked if the decision could be made before November. **Childress** said that after Commission approval, FWP goes to the Land Board for final approval, which is scheduled for October 20th. **Childress** added the Land Board will act on the 20th if the proposal is presented to them prior to that day.

Plans to tour the Ranch were underway so this decision can be made during the conference call on October 17th and not held until the November meeting.

6. Pheasants Forever Acquisition - Final. **Childress** explained that this 70-acre acquisition would become a part of the Ninepipe Wildlife Management Area. It would be a fee title acquisition, and would serve to preserve and enhance wildlife habitat for a variety of upland birds, waterfowl, and other wildlife. **Childress** introduced **Jim Williams, FWP Region 1 Wildlife Manager**, who introduced **Greg Shafter, President of the Mission Valley Pheasants Forever** from Charlo. **Williams** said that since the Commissioners' May tour of this Pheasant's Forever property and the Ninepipe WMA, an Environmental Assessment has been prepared, a hearing has been held, and a comment period resulted in a few letters. All comments have been positive. He said the Confederated Salish & Kootenai Tribe is supportive as well. Local sportsmen have also pressed FWP to keep working on this project. This began as a two-part proposal when it was brought to the Commission last May - the Pheasants Forever parcel, and the Ringneck Ranch parcel. The Ringneck Ranch piece is subject to North American Wetland Conservation Act grant funds, still undetermined as of yet. The Pheasants Forever site contains nine restored pothole wetlands which FWP would manage as cover and food plots for migratory birds, waterfowl, and pheasants, and would be primarily used for hunting.

Murphy asked for an overview, from a management standpoint, of what additional costs may be involved. **Williams** said the primary costs would be the additional time for John Grant, FWP Wildlife Manager, some fuel, and a small amount of fencing.

Action: Murphy moved and Lane seconded the motion to approve the fee title acquisition of the 70-acre Pheasants Forever property for \$68,000 as recommended by the Department.

Discussion on Motion. **Murphy** commented that he has been to this site, and feels this is an excellent acquisition. **Brenden** said his only reservation is that FWP will not have direct control over this, as it is on the Reservation, and that the revenue goes into Tribal coffers. **Williams** said that is correct, however, FWP is operating under a State-Tribal Agreement that Governor Racicot initiated. Funds raised from buying a hunting license go into a wildlife program; these proceeds are then spent towards wildlife management in that area. **Williams** said this Agreement has been working, and the local sportsmen are encouraging both parties to make it work.

Greg Shafter thanked the Commission for their consideration of this proposal, and said his organization enjoys their relationship with FWP, and they intend to keep working with the Department.

Action on Motion: Motion carried.

7. Programmatic Guidance for Translocation of Prairie Dogs Rule - Tentative. **Childress** said the Commission passed and endorsed a Prairie Dog Management Plan in January, 2002, which provided overall direction towards Blacktail and Whitetail Prairie Dog management in Montana. One item that was identified was to develop a management protocol for translocation. One of the management actions was the use of relocation to reestablish Prairie Dogs in areas that are identified through a criteria process. It involves moving them from unwanted areas to acceptable locations.

The purpose of this rule is to adopt a translocation protocol providing specifications needed for the proposal. Ultimately, it will become the responsibility of the Regional Supervisors. Final approval of this rule by the Commission will provide authority to the Regional Supervisors to approve translocation proposals. If this rule is not approved, each and every prairie dog translocation proposal will come before the Commission for approval.

Brenden questioned why anyone would want to translocate Prairie Dogs, but said he realizes there are those who wish to do so. **Childress** reiterated that this is still in the tentative phase; it will still go through the comment period, and be brought before the Commission for the final decision. **Murphy** asked if this rule will address / protect the neighbor who does not want the Prairie Dogs translocated next to his/her property. **Childress** assured him that if a neighbor was opposed to the transplanting of Prairie Dogs, FWP would not relocate them there. He said all bordering landowners will be contacted before a proposed relocation would be approved. At this point, FWP is merely presenting the rule for approval for the translocation process. **Childress** explained that if a proposal is approved, it will go through an EA process. **Mulligan** said the Appeal Process in the rule only provides for proponents, and it is important that opponents have the ability to appeal.

Action: Walker moved and Mulligan seconded the motion to adopt draft programmatic guidance for translocation of Prairie Dogs as a tentative rule and receive public comment.

Discussion: **Mulligan** commented that the incentive to approve this is that the request for this will not go away, and he added that this rule will remove the necessity of the Commission dealing with each individual request.

Amendment to Motion: **Murphy** moved and **Brenden** seconded the motion to amend the motion to specifically include adding that upon approval of a translocation, there is also an appeal process established for opponents the same as it has for those who are proponent.

Action on Motion: Four in favor - 1 opposed (Brenden). Motion carried.

8. Deer / Elk Auction Rules - Tentative. **Jeff Herbert, FWP Wildlife Division Assistant Administrator**, presented proposed tentative rules designed to govern the sale, auction and/or lottery of one mule deer license and one elk license for use during the 2004 hunting season. Legislation authorized this auction / lottery, however the effective date of the legislation was October 1, 2003, therefore, the rules could not be proposed until after that date. The template for the moose and bighorn sheep auction rules and licenses rules were used as a template for these. The opportunity to bid is available to conservation organizations and / or individuals.

He said there are two issues that need to be taken into consideration. One is the timing of the Commission's decision. He said typically, organizations take advantage of auctions for their major fund raising events in the winter. He said this has to be presented for public comment, and bids need to be solicited. He said he would like to receive bids from interested organizations by December 15th, and award the bids at the January meeting.

The second issue to address is that deer and elk rules are different from moose and sheep rules in that there is one moose season and one bighorn sheep season, and those licenses allow the hunter to go anywhere in the state. Because deer and elk licenses are not done in that same vein, what would be conveyed is the license plus whatever special permit would be required to hunt in a specific area. The intent is to provide the privilege of moving throughout the state, if so desired, during any legal early archery or general rifle season within a defined season or permit. Restrictions within an area would have to be abided by. The hunter could not go to an area where there is no open season.

Walker asked if this would affect outfitter's plans. **Herbert** replied that if the hunter wishes to retain an outfitter, the outfitter must have that area outlined in his plan. He clarified that an outfitter is not a requirement.

Herbert said these proposed rules are for either an auction or a lottery; the language in the statute reads lottery or auction. He noted the word "lottery" was added for deer and elk. **Herbert** said that as a proposed annual rule, it will need to be presented for public comment. A time period will need to be allowed to solicit bids prior to final action by the Commission.

Action: **Mulligan** moved and **Murphy** seconded the motion to approve the tentative annual rules for the use of the licenses and the rules for conducting the auction for mule deer and elk. Motion carried.

Herbert asked, and it was approved, for the public comment period to be shortened to 2-3 weeks, to allow sufficient time for applicants to assemble their bids. **Walker** asked if the rulemaking process could be completed so that it could be brought before the Commission in November for finalization. Herbert said it could be, at which point solicitation of bids could begin immediately. **Herbert** will verify with the Legal department the length of time the comment period can be shortened by.

Herbert said it is imperative that the language specify how and when that license could be used to assure clarity that provides an opportunity across the whole hunting season. Hunting seasons are more complex for deer and elk than they are for sheep and moose. **Walker** recommended tying it in with printed regulations, but Herbert said that in doing that, if a special permit is involved, they lose the opportunity to hunt elsewhere. **Mulligan** said it needs to specify if it covers the time from bow hunting season in the Breaks, and finishes in the late season. **Herbert** asked if the intent would be to allow someone the opportunity to hunt in the Breaks during archery season, hunt the regular season, and hunt the late season as, in essence, that would mean multiple permits. **Walker** recommended it be limited to one permit as described in regulations, and they need to pick what it is. **Herbert** said to generate the most revenue, the applicant should have "bounce-around" opportunity, but it needs to be within FWP's regulation framework. They cannot do anything that is prescribed outside the regulations. **Mulligan** said if this is the procedure with sheep and moose, it needs to remain consistent with deer and elk. **Herbert** stated that permission must be obtained from the landowner if hunting on private land. He added that all regulatory aspects are as described in the regulations - they are conveyed the privilege to move around.

Action: The Commission unanimously agreed to approve the proposed deer and elk auction rules as proposed by the Department. (No formal motion made).

9. 2004 - 2007 Fishing Regulations - Final. **Chris Hunter, FWP Fisheries Division Administrator**, said the process to simplify the fishing regulations began approximately 18 months ago. He said there has been a great deal of public involvement in the process. In the course of developing the regulations, a booklet was developed and distributed to 4,500 people and to license agents, the information was on the internet, the regions did public outreach, and the ALS system was utilized to generate public comment. Most of the issues received at least 90% supportive comments; only 2 proposals received significant negative comment, and they involved the exceptions for youth to keep one fish in catch and release areas, and the hook and line setlines through the ice in the Central region.

Hunter introduced **Karen Zackheim, FWP Fisheries Management Bureau Chief**, who said the Commissioners had been provided with the public comment information as she felt it important they see it without it first being filtered. She also provided the Regulations as they will look as a finished product. Zackheim recommended the Commissioners first vote on the General Regulations, then proceed with each individual district.

GENERAL REGULATIONS

Zackheim said there are no proposed changes being recommended to the proposed tentative regulations.

Action: Brenden moved and Lane seconded the motion to adopt the regulations in the General Regulations for the 3 Districts as recommended by the Department. Motion carried.

Mulligan said he is concerned with the requirement for identification on ice shelters in the 3 districts. **Zackheim** said this regulation is listed in the general regulations that were just passed. The regulation that was passed indicates that all icehouses would include identification. **Mulligan** said he feels that it would be overkill on the small portable shelters, the ones that are pulled off the ice each trip. In some cases, the identification would cover the entire shelter. **Zackheim** said there had been enforcement input suggesting it would be easier if all shelters had identification.

Action: Mulligan moved and Brenden seconded the motion to remove the requirement for identification on removable ice shelters in all three districts. Motion carried.

EASTERN DISTRICT – **Zackheim** said there is one change to the tentative proposals regulations regarding bait. It is proposed to add BLM reservoirs in Blaine County and Phillips County where bait may be collected and used.

Action: Brenden moved and Walker seconded the motion to accept the eastern district fishing regulations as proposed by the Department inclusive of the addition of BLM reservoirs in Blaine and Phillips Counties. Motion carried.

CENTRAL DISTRICT - **Zackheim** said considerable negative comments were received relative to the hook and line limits, and not leaving tip-ups on the ice, and, she said, there was confusion with the regulations, therefore, it was decided to leave the regulations as they were in the past. Tip-ups can be used and fishermen do not have to be in attendance, and they can continue to use two lines as the standard, and FWP can provide exceptions for the 6 lines. Therefore, this proposal is removed from the tentatives.

Zackheim said she received the most negative comments on the exception for kids fishing. People expressed the opinions that children did not need that exception. **Walker** said there were 2 ½ times more comments in support, however, there were many negative comments. **Zackheim** said this is true in the hook and line limits as well. However, they looked at the substantive comments, and now propose to compromise, which is to leave the exception on Hauser, Holter and Lake Helena, but not on rivers where there is a lot of pressure on the rivers.

Action: Walker moved and Lane seconded the motion to adopt the regulations as proposed by the Department with the modification to include a one-fish exception to the catch and release regulations for anglers 14 years of age and younger on the Bighorn, Boulder, and Madison Rivers. These waters would be in addition to the reservoirs and lakes already included.

Discussion on Motion: **Brenden** asked what the rationale for this motion was. **Walker** said he feels this would encourage youngsters to fish. He said there are cases where catch and release is biologically motivated, and there are cases where it is purely a social aspect, and it is his desire to keep all waters open for children to catch and keep a fish. He believes part of the heritage of fishing is the taking and utilizing of fish that are provided on this earth, and he feels this will make better sportsmen of children.

Brenden said the Eastern District has a lack of rivers and water in general so has a problem compared to the rest of the state. He asked what the biological effects would be if the Missouri was included. He said he mentions this in the interest of possibly providing opportunity to more people. **Walker** said

this only effects the Missouri below Hauser Dam. **Murphy** said the Department indicated there was no biological impact, and he asked if that was true on the Missouri. Karen said there IS a biological justification on the Missouri and the West Fork as well.

Mulligan said he agrees that the fisheries would not be impacted, and many comments focus on the ethical nature in what kids are being taught. He said the focus of these regulations is not to teach ethics to children, that is the parents' responsibility. He feels the catch and release issue should be based on a biological basis. Mulligan said that while the majority of the public supports catch and release, a lot of the feedback he has received is not supportive of Walker's proposal. If he would oppose it, it would be because the public does not want it, not because it is unethical. On the other hand, if a fish is caught and will die, and is thrown back in the river, maybe the message being taught is to release mortally injured fish. **Murphy** said he shares the same concerns, and he shares that same moral dilemma. He said somehow exceptions need to be made for kids to keep a fish, however, he does not want to teach kids that if its going to die, to just throw it back in the water. He said the catch and release philosophy, to some extent, puts people in the position of having to, by law, throw back a mortally injured fish. He would like to include the Missouri. Walker said there will be an opportunity to revisit this, however, he is not including that in his motion today.

Bruce Farling, Montana Trout Unlimited, said there is a different perspective. He said this is not about a cultural ethic versus another cultural ethic. He said the reason they have supported catch and release, is for biological reasons. He asked that the Commission reconsider the Boulder, Madison, and the Bighorn, as there are biological reasons. He said the populations are down in all three rivers.

Murphy said he understands the catch and release program as it relates to biological impacts, but he also understands that fish are dying, and he has difficulty in thinking the fishery is in such poor shape that a child cannot keep a fish when fishermen fish all day and several die due to injury or becoming overtaxed physically.

Jim Kropp, FWP Enforcement Administrator, said this issue was discussed in the early tentatives regarding people who possess fish who will die in catch and release areas. He said typically if people are honest about the fish they catch and keep that will undoubtedly die, Enforcement collects those fish and issues courtesy citations, or gives verbal warnings, and sometimes fines. He said this often involves inexperienced fishermen, so the wardens attempt to provide educational opportunities to adults and children alike in these situations. **Mulligan** asked for reaffirmation from the FWP biologists that this is not a biological issue.

Jim Darling, FWP Region 5 Fisheries Manager, said his region covers the Boulder and Bighorn area. The Boulder River proposal affects a relatively small section with limited access. The Rainbow population in that section has been stable. The Bighorn River fluctuates with environmental conditions more than it does with harvest. He does not see this proposal as a biological issue.

Bruce Rich, FWP Region 3 Fisheries Manager, said relative to the Madison River, their best guess is that they do not feel it would be a significant biological issue, however, they will continue to monitor the River.

Steve Leathe, FWP Region 4 Fisheries Manager, said the only waters that would be affected in Region 4 would be Holter, Hauser and Lake Helena. In those waters, the Brown Trout are not plentiful, and it would be rare to catch one, so in his opinion, kids would not have a large effect. The only area they are concerned about is the 3-mile stretch of river immediately below Hauser Dam as Brown Trout swim up and spawn.

Murphy said he will not move on adding the Missouri at this time. He feels the catch and release program should be revisited if fish are dying.

Action on Motion: Motion carried.

Zackheim said that FWP received a comment from the Forest Service regarding the small, vulnerable population of Cutthroat Trout in Big Coulee Creek near Great Falls, and they requested FWP close that creek to fishing. It is currently protected by catch and release, and is a very small population. There are other places to fish in this area. Zackheim said that Hyalite Creek and its East Fork tributary need to reflect that their opening date would be July 15th rather than the 3rd Saturday in July. This would make it consistent with the other opening dates in the Central District. This was merely an oversight in the tentatives.

Action: Walker moved and Lane seconded the motion to standardize the opening date of Hyalite Creek and its tributaries to July 15th, and to close Big Coulee Creek near Great Falls. Motion carried.

WESTERN DISTRICT – Zackheim said there are proposed changes to the tentatives in the Western District.

FWP is recommending that since Dry Creek and Trout Creek are populated by Bull Trout, artificial lures need to be used at their mouths. In response to comment to the Fisher River and the Little Blackfoot Rivers, the limits for harvesting were increased and would have an impact on Cutthroat Trout, so FWP is recommending removing the Fisher River from the catch and release proposal, but leave the Little Blackfoot in the proposal for catch and release of cut throat trout with no exception for youngsters.

Pat Saffel, FWP Region 2 Fisheries Manager, said with the high vulnerability of Cutthroat Trout and the high pressure of angler days on the Blackfoot River, Cutthroat may be endangered. **Saffel** said the biological information needs to be studied further. Murphy recommended excluding the Fisher and the Blackfoot from the proposal.

Zackheim said to concur with the Confederated Salish & Kootenai Tribes regarding Flathead, FWP proposes a lake trout limit of 20 daily, 1 in possession over 36 inches, and all fish 30-36 inches must be released.

Zackheim said the North Fork of Flint Creek was overlooked in the Georgetown Lake catch and release portion, for the protection of Brook Trout, so it is proposed that the North Fork of Flint Creek be included.

Mulligan said the Georgetown Lake proposal is consistent with the intent of the whole drainage area and should be supported. **Mulligan** said, and **Saffel** agreed, that Georgetown Lake is biologically in trouble. **Murphy** expressed concerns over catch and release fishing. **Murphy** proposes that a limit of two Brook Trout be placed on these tributaries and the lake.

Mulligan said he would not be able to support that recommendation. Even though Brook Trout are not considered native fish, it is a predominant fish in Georgetown Lake, and as Georgetown is in trouble biologically, it should be left alone to recover. **Mulligan** said the public supported the catch and release proposal, and he feels it should continue. He said it is a biological issue and should be supported.

Hunter said the Brook Trout population in Georgetown Lake has declined to such an extent that there are very few Brook Trout caught there in the winter. It is primarily a Kokanee fishery in the winter.

*Action: **Murphy** moved and **Walker** seconded the motion to exclude the Fisher and the Little Blackfoot from cutthroat trout catch and release with the caveat that FWP look at it from a biological standpoint, and if the fishing pressure is such that it justifies looking at this type of action on the Little Blackfoot, it be taken up for consideration again.*

*Discussion on Motion: **Farling** asked that the Little Blackfoot be reconsidered for Cutthroat.*

Action on Motion: Three in favor and two opposed (Mulligan and Lane). Motion carried

*Action: **Mulligan** moved and **Walker** seconded the motion to add Flint Creek to catch and release at Georgetown Lake. Three in favor and two opposed (Lane and Murphy). Motion carried.*

*Action: **Brenden** moved to keep the lake trout limit the way it is, and not drop the limit from 21 to 20 on Flathead Lake. No seconds to the motion. Motion died.*

*Action: **Murphy** moved and **Walker** seconded the motion to adopt the Flathead Lake recommendation as proposed by the Department. Four in favor and one opposed (Brenden). Motion carried.*

*Action: **Murphy** moved and **Brenden** seconded the motion to adopt the Clark Fork recommendation as proposed by the Department regarding the use of artificial lures on the Clark Fork tributaries. Motion carried.*

*Action: **Murphy** moved and **Mulligan** seconded the motion to adopt the tentatives with the amendments. Motion carried.*

10. Makoshika Archery Range Lease - Final. **Doug Monger, FWP Parks Division Administrator,** said the nearly 80-acre Makoshika Archery Range is located within Makoshika Park. This range has been in existence for 30 years by means of a no-cost lease agreement between the archery club and Dawson County. Monger said it is well operated, and the relationship between the Parks staff and the club membership has been very cooperative. This proposed 5-year lease would merely be an extension of practices already in place. The Department is recommending proceeding with the 5-year lease agreement with the Makoshika Bowmen's Association for their continued use of the archery range.

Action: Walker moved and Brenden seconded the motion to approve the Department's recommendation to proceed with the 5-year lease arrangement with the Makoshika Bowmen's Association for their continued use of the approximately 80-acre archery range site. Motion carried.

11. Smith River Special Landowner Rule - Tentative. Jeff Hagener, FWP Director, said that due to the popularity of the Smith River, the legislature designated the Commission the authority to establish restrictions on that river to preserve the quality of the river, resulting in the issuance of limited permits. He said over the last few years, there has been contention concerning landowners with property contiguous to the river. The rule that the Commission approved two years ago resulted in FWP and the Commission being sued by parties owning property along the river. In August, FWP agreed to the mediation process that was proposed by the landowners' attorneys to resolve the matter rather than go to court. Hagener said that Tom Reilly, FWP Parks Division Assistant Administrator, Bob Lane, FWP Chief Legal Counsel, and Jack Lynch, FWP Legal Counsel, met with the landowners and their attorneys. He said it was FWP's intent to maintain the control they felt was appropriate to protect the quality of the experience, and to protect the river management obligation. Through the discussions, a conceptual agreement was developed. It was made clear to the landowners' attorneys that the Department could not make an agreement or make a commitment to change the rule, as any modifications needed to be brought before the Commission. FWP did commit to bring before the Commission the terms of the conceptual agreement, and consider them as an amendment to the Smith River Rule. All parties agreed to what was felt to be a reasonable compromise, and agreed to bring it before the Commission. The most salient modifications to the Rule are three items:

1. *Improved Landowner Reporting.* Currently there are no reporting requirements for landowners floating the Smith River within the contiguous property boundaries. The proposed change would require all landowner floats be recorded / documented by FWP.
2. *Boat Tags on All Landowner Craft.* Under the current rule, landowners are not required to obtain and display boat tags when floating the Smith River within their contiguous property boundaries. The proposed change will require boat tags on all landowner craft.
3. *Landowner Designated / Responsible Float Group Leader.* Each landowner shall accompany an individual float, or designate a responsible individual to accompany each landowner float party. The present rule requires a landowner or immediate family member to be present on a contiguous property float. This presents an anomaly for fee title property held by a corporation for land that is leased.

There are no proposed changes concerning public or outfitter launches, landowner maintenance floats, or day float opportunities allocated to landowners. Landowners will still be prohibited from using landowner contiguous property boundary floats for outfitting or commercial purposes.

If this rule change is approved, it will be presented for public comment and public hearings. If it is not changed, the lawsuit will most likely continue.

Lane said this has been a long drawn out process and he said this will hopefully alleviate the contention, as well as honor the agreement.

Action: Lane moved and Brenden seconded the motion to adopt the Smith River Special Use Area Rule (Section K) as a tentative proposal.

Discussion: **Mulligan** said when boat tags were proposed earlier, 126 comments were received (93 % were opposed). He does not feel this proposal meets the intent of the statute. He said this rule is written in a manner that basically allows the opportunity for unlimited floating, and he cannot support it the way it is written. **Mulligan** stated that when tags were proposed before, some landowners wanted colored tags so they could differentiate between themselves. **Lane** said his recollection of this request was so landowners could differentiate between themselves and the public.

Larry Copenhaver, MT Wildlife Federation, said this rule would create another class of people on the Smith River. He said this is a navigable waterway that belongs to the people of the state. He understands if you own property on the river and float within your boundary there should not be a problem, but when it comes to floating the whole stretch of river, it creates extra opportunities the general public does not share. He feels this interferes with fairness to the general sportsmen, and hopes the Commission retains the original wording.

Action on Motion: Four in favor - one opposed (Mulligan). Motion carried.

Citizens' Open Microphone - Public Opportunity to Speak on Issues Not Discussed at this Meeting.

Jim Martin spoke to the commercial fishing endeavor on Canyon Ferry Lake. He said he and Richard Green are still working on it. Green is looking into the purchase of boats, and Green is in the process of getting equipment ready. They plan to set up a netting operation near Three Forks. They have looked at a fertilizer plant in Townsend, as carp is a natural fertilizer. He will keep the Commissioners informed as developments happen.

Meeting adjourned at 5:16 p.m.

Dan Walker, Chairman

M. Jeff Hagener, Director